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September 11, 2013

Honorable Viktor V. Pohorelsky  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: In re Air Cargo Shipping Services Litigation, 06-MD-1775 (JG)(VVP)**

Dear Magistrate Judge Pohorelsky:

Defendants submit this opposition to plaintiffs' motion seeking reimbursement for international telephone charges incurred in connection with the depositions of John Cooper, K.K. Wu, and Eddie Liu (Dkt. No. 1899, filed Sept. 4, 2013). Because no rule or agreement between the parties supports plaintiffs' request, and because requiring plaintiffs to bear these costs is not inequitable, their motion should be denied.

Plaintiffs cannot point to any agreement between the parties that supports their request. The draft stipulation referenced by plaintiffs is not a basis for the relief they seek. The stipulation discussed between the parties, even if it had been executed with respect to the depositions at issue, deals exclusively with the distribution of exhibits to counsel attending depositions telephonically, and is silent on the subject of teleconference costs. In fact, plaintiffs have never approached defendants prior to a deposition to discuss teleconference costs. Thus, defendants have no way of knowing whether the parties could have made teleconference arrangements at a much lower cost. To be clear, defendants do not accuse plaintiffs of inflating those costs; but without any prior discussion or information, it is simply unfair to demand, after the fact, that defendants pay the cost of telephonic service that is generally provided by the party that notices or hosts a deposition.

Further, plaintiffs cite no rule allowing, much less requiring, such post-deposition cost-shifting. Local Civil Rule 30.1 provides that a party may move the Court to issue an order prior to a deposition that requires the adverse party to pay the expense (including a reasonable counsel fee) of the attendance of one attorney for each other party at a deposition taking place 100 miles from the courtroom. This rule is meant to encourage parties to consider "less costly alternatives" and allows the Court to weigh the equities between parties when the strategic choices of one party would cause another to incur inordinate expense. *Teen Model v. Blood is the New Black*,

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No. 11 Civ. 05766, 2012 WL 5838185 at \*1 (S.D.N.Y. Oct. 26, 2012) (construing identical Local Civil Rule 30.1 and awarding travel costs of counsel for deposition noticed by adverse party). Notably, post-deposition petitions are disfavored. *Id.*

Under this rule, *defendants* could have petitioned the Court to shift the cost of their attendance at the depositions of John Cooper, K.K. Wu, and Eddie Liu to plaintiffs, which would have required plaintiffs to pay travel costs and reasonable counsel fees for one attorney from each defendant. As plaintiffs point out in their motion, such travel expenses would have been extremely expensive, and teleconference lines were much more cost-efficient. And even if plaintiffs could somehow invoke this rule with respect to depositions that they themselves noticed, they did not petition the Court for teleconference expenses before the depositions occurred. Further, they fail to explain why these costs are different from other costs incurred in this litigation, which they undoubtedly would seek to add to their reimbursement request to the Court should plaintiffs prevail.

Finally, defendants' refusal to pay these teleconference costs is not inequitable. As plaintiffs concede, defendants have provided teleconference arrangements and conference rooms for the vast majority of depositions in this case, even international depositions noticed by plaintiffs. For example, Cathay Pacific provided teleconference arrangements for the deposition of Christine Liu in Hong Kong. Asiana provided teleconference arrangements for the depositions of Bong Won Seo, Freeman Dung and Young Joon Woo in Korea, as well as the deposition of Yoon Kyu Oh in England. Further, plaintiffs' counsel have attended U.S. depositions using teleconference lines provided by defendants, including those provided by Singapore Airlines for the deposition of James T. McClave and Asiana for the deposition of Roger Haack. Defendants have never sought reimbursement for these costs from plaintiffs.

Defendants remain willing to discuss a procedure for allocating teleconference costs of future depositions, as proposed in defendants' letter to plaintiffs dated July 9, 2013 (Exhibit A). But there is no basis to grant plaintiffs' motion with respect to past depositions.

For these reasons, defendants respectfully request that the Court deny plaintiffs' motion.

Respectfully submitted,

/s/ William R. Sherman

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**CERTIFICATE OF SERVICE**

I, William R. Sherman, certify that on September 11, 2013 I caused a true and correct copy of the foregoing to be served via the Court's ECF system upon all counsel registered for ECF in this case.

/s/ William R. Sherman

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